

The right to education for trans children in Aotearoa New Zealand

A submission to the UN Committee on the Rights of the Child (Committee)
for the draft List of Issues Prior to Reporting

1 March 2020

I am a human rights consultant in Aotearoa New Zealand with extensive experience researching the experiences of trans and non-binary children. This work has included project managing the New Zealand Human Rights Commission Inquiry into Discrimination experienced by transgender people, published in 2008,¹ and co-authoring the Aotearoa Trans and non-Binary Health Survey report, *Counting Ourselves*,² published in September 2019.

This short submission to endorse the wider submission and recommendations sent through by Te Ngākau Kahukura, an NGO focused on rainbow youth rights and wellbeing. The material summarised in that submission and its recommendations draw from collaborative community-based submission to UN mechanisms that I have been involved in for many years, including joint submissions to the last two Universal Periodic Reviews of New Zealand's human rights record. I have copied the two recommendations from Te Ngākau Kahukura's submission below:

We recommend that the Committee seek the following information from the New Zealand government:

- How is New Zealand addressing discrimination, harassment and hate speech, particularly towards transgender, non-binary and gender diverse New Zealanders, and when will New Zealand amend the Human Rights Act 1993 to prohibit discrimination on the grounds of gender identity, expression, and sex characteristics, to ensure trans, gender-diverse and intersex children's right to be free from discrimination?
- :In light of the Committee on the Elimination of Discrimination Against Women's recommendation in its 2018 concluding observation of New Zealand, when will the government adopt clear legislative provisions explicitly prohibiting the performance of hypospadias surgery, clitoral surgery, or feminizing genitoplasty on children, as well as surgical or other medical treatment on intersex children not necessary for the preservation of life before they reach the legal age of consent; provide intersex children, young people and their families with specialised psychosocial support; and provide redress to intersex persons who have undergone such surgical or medical treatment they did not consent to?

In addition, as a researcher who has worked with communities, governments and national human rights institutions across Asia and Pacific on the right to legal gender recognition, I would like to encourage the Committee to consider the impact of lack of recognition on children and young people's right to education.

¹ NZ Human Rights Commission (2008) *To Be Who I Am: Kia noho au ki tōku anō ao*, Report of the Inquiry into discrimination experienced by transgender people, page 73, paragraph 6.54. Retrieved 1 March 2020 from: <https://www.hrc.co.nz/our-work/sexual-orientation-and-gender-identity/past-projects/inquiry-discrimination-experienced-transgender-people/>

² Veale, J., Byrne, J., Tan, K., Guy, S., Yee, A., Nopera, T. & Bentham, R. (2019). *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Transgender Health Research Lab, University of Waikato: Hamilton NZ. Retrieved on 1 March 2020 from: <https://countingourselves.nz/index.php/community-report/>

In the second half of 2019, I sat on the *Working Group for reducing barriers to changing registered sex* established by the Minister of Internal Affairs³, which was scheduled to report back to the Minister in December 2019. The Working Group's Terms of Reference specifically required looking at the experiences of gender diverse young people.⁴ Parents and caregivers of transgender and gender diverse children and young people have previously made submissions about the significant barriers to legal gender recognition caused by New Zealand's current Family Court process⁵. In effect, while New Zealand has had a legal mechanism enabling parents and guardians to amend the sex details registered on their child's birth certificate, the evidential, medical threshold has meant only a handful of children have been able to access these provisions.

Below I have copied some of the key findings from *Counting Ourselves* about trans and non-binary children's experiences at school, including those related to the ability to change their name or gender on school records.

School discrimination, policies and practices

More than a third (35%) of 15–19-year-old participants had faced discrimination at school. This rate was much higher than the 13% of 15–19-year-olds in the general population who faced such discrimination, as measured by the 2016 General Social Survey.

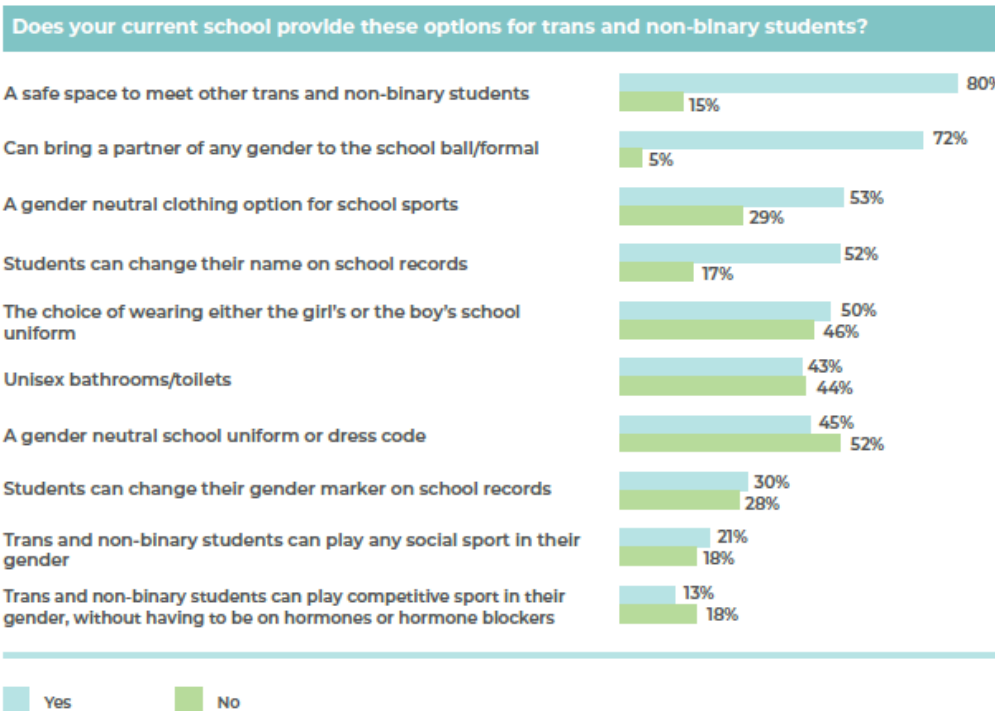
We also asked school students about specific safety concerns for trans and non-binary students. Over half (59%) disagreed that it is safe for trans and non-binary students in their school to use a toilet or changing room that matches their gender. Less than half had access to a unisex bathroom at their school.

We also asked about school policies and practices that could support the inclusion of trans and non-binary students. . . . Less than a third were able to change their gender marker, and many students were unsure of the policies in their school for changing name or gender marker.

³ <https://www.dia.govt.nz/BDMReview-Working-Group-for-reducing-barriers-to-changing-registered-sex>

⁴ [https://www.dia.govt.nz/vwluResources/Working-Group-for-Reducing-Barriers-to-Changing-Registered-Sex-Terms-of-Reference/\\$file/Working-Group-for-Reducing-Barriers-to-Changing-Registered-Sex-Terms-of-Reference.pdf](https://www.dia.govt.nz/vwluResources/Working-Group-for-Reducing-Barriers-to-Changing-Registered-Sex-Terms-of-Reference/$file/Working-Group-for-Reducing-Barriers-to-Changing-Registered-Sex-Terms-of-Reference.pdf)

⁵ https://www.parliament.nz/resource/en-NZ/52SCGA_EVI_74854_817/bd87133e395ea5621c5fa55e7306657c4c290822



Counting Ourselves made eight high-level recommendations, noting that many of these have previously been submitted to formal consultation processes within Aotearoa New Zealand or through reporting to United Nations' human rights mechanisms. One of these focused on trans and non-binary students' right to education and recommended:

4. Support schools to be safe and inclusive for trans and non-binary students

- resource initiatives that assist schools to deliver high-quality, comprehensive sexuality and gender diversity education, undergo staff training on gender diversity and establish rainbow diversity groups.
- address bullying against trans and nonbinary students and adopt inclusive policies and practices for trans and non-binary students, especially around access to sports, bathrooms and changing rooms, including gender-neutral/unisex options for uniforms, bathrooms and changing rooms.

Based on this research, I would like to request that the Committee seeks the following information from the New Zealand government:

- How is the Government responding to the recommendations of the *Counting Ourselves* report about supporting schools to be safe and inclusive for trans and non-binary students and the report of the *Working Group for reducing barriers to changing registered sex* that relate to the experiences of trans and non-binary children including their ability to participate fully at school using a name and gender marker that reflects their gender identity and expression.

Yours sincerely

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